

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
RICHMOND DIVISION

THE REAL TRUTH ABOUT OBAMA, INC., )  
  )  
  )  
Plaintiff,                            )  
                                    )  
                                    )  
v.                                    )         No. 3:08-cv-00483-JRS  
                                    )  
                                    )  
FEDERAL ELECTION COMMISSION and )         RESPONSE TO  
UNITED STATES DEPARTMENT OF     )         MOTION TO STAY  
JUSTICE,                            )  
                                    )  
Defendants.                        )

**DEFENDANT FEDERAL ELECTION COMMISSION'S RESPONSE  
TO PLAINTIFF'S MOTION TO STAY ALL PROCEEDINGS**

Defendant Federal Election Commission (“Commission”) respectfully submits this response to Plaintiff The Real Truth About Obama, Inc.’s (“RTAO’s”) Motion to Stay All Proceedings Pending a Decision in *Citizens United v. FEC*. Although the Commission does not entirely concur with RTAO’s description of the relationship between the instant matter and *Citizens United*, the Commission does not oppose RTAO’s motion. Specifically, the Commission notes that only one of RTAO’s four claims — i.e., the challenge to the Commission’s regulation, 11 C.F.R. § 114.15, codifying the holding of *FEC v. Wisconsin Right to Life*, 127 S. Ct. 2652 (2007) — is directly at issue in *Citizens United*. The issues raised in RTAO’s remaining three challenges are not currently before the Supreme Court.<sup>1</sup> See Questions Presented, *Citizens United v. FEC*, S. Ct. No. 08-205, <http://origin.www.supremecourtus.gov/qp/08-00205qp.pdf>. Nonetheless, to the extent that

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<sup>1</sup> These are RTAO’s challenges to the Commission’s solicitation regulation, 11 C.F.R. § 100.57(a), to the Commission’s regulatory definition of “expressly advocating,” 11 C.F.R. § 100.22(b), and to the Commission’s policy statement regarding application of the “major purpose” test for political committee status.

RTAO seeks to stay the present action as to each of Plaintiff's claims without regard to whether they are at issue in *Citizens United*, the Commission has no objection to that request.

Respectfully submitted,

/s/

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December 22, 2008

## CERTIFICATE OF SERVICE

I hereby certify that on the 22nd day of December, 2008, I will electronically file the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing (NEF) to the following:

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